

DeBN-Yes, APPEAL

**U.S. Bankruptcy Court  
Western District of Texas (Austin)  
Bankruptcy Petition #: 20-10881-tmd**

*Assigned to:* Bankruptcy Judge Tony M. Davis  
Chapter 11  
Voluntary  
Asset

*Date filed:* 08/04/2020  
*341 meeting:* 11/17/2020  
*Deadline for filing claims:* 11/30/2020

**Debtor**  
**WC 4th and Colorado, LP**  
814 Lavaca St.  
Austin, TX 78701  
TRAVIS-TX  
Tax ID / EIN: 45-2461759

represented by **Omar Jesus Alaniz**  
Reed Smith LLP  
2580 N. Harwood Street  
Suite 1500  
Dallas, TX 75201  
214-680-4292  
Fax : 214-680-4299  
Email: [oolaniz@reedsmith.com](mailto:oolaniz@reedsmith.com)

**Michael P. Cooley**  
Reed Smith LLP  
2850 N. Harwood Street  
Suite 1500  
Dallas, TX 75201  
469-680-4213  
Email: [mpcooley@reedsmith.com](mailto:mpcooley@reedsmith.com)

**Devan J. Dal Col**  
Reed Smith LLP  
2850 N. Harwood St.  
Suite 1500  
Dallas, TX 75201  
469-680-4280  
Email: [DDalCol@reedsmith.com](mailto:DDalCol@reedsmith.com)

**Mark H. Ralston**  
13155 Noel Road  
Suite 700  
Dallas, TX 75240  
214-499-5544  
Fax : 214-499-5501  
Email: [mrals@fjrpllc.com](mailto:mrals@fjrpllc.com)

Filing Date	#	Docket Text
03/31/2021	<u>238</u>	Order Regarding (related document(s): <u>196</u> Motion for Declaration Regarding Lease Expiration ( <i>21 Day Objection Language</i> ) filed by Michael P. Cooley for Debtor WC 4th and Colorado, LP (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Proposed Order)) (Order entered on 3/31/2021) (Turner, Blayne)



**IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.**

**Dated: March 31, 2021.**

  
**TONY M. DAVIS**  
**UNITED STATES BANKRUPTCY JUDGE**

---

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

IN RE:

WC 4TH AND COLORADO, LP

DEBTOR.

§  
§ CASE NO. 20-10881-tmd  
§  
§ CHAPTER 11  
§

**ORDER REGARDING LEASE EXPIRATION**

On February 23, 2021, Debtor filed a Motion for Declaration Regarding Lease Expiration, seeking entry of an order declaring that the lease between Debtor, as lessor, and JAC Entertainment, LLC, as lessee, had expired. [ECF No. 196]. At the hearing on March 17, 2021, the crucial issue was whether notice that JAC intended to exercise a five-year option was given and/or received in accordance with the terms of the lease. [Lease, Drs.' Ex. 3, at 10].

**22. Notices.** Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

If the notice had been sent by certified mail, it would have been deemed effective regardless of whether it was actually received. So the lessee had one clear chance to avoid this result, and missed it by failing to send the notice by certified mail.

Notice by regular mail would have been enough, but in that case, the notice had to actually be received. Here, the Debtor argued, and its witnesses testified, that they looked and could not find the alleged notice or evidence that it was received. Was it received and then lost in the shuffle of the pandemic, as suggested by lessee? Perhaps, but the lack of an email trail related to a notice so obviously consequential makes that unlikely – once something gets into an email system, it is nearly impossible to purge.

Indeed, and admittedly, the only evidence that the notice was actually received is Mr. Richardson's recollection of a phone call he had with Mr. Elliot. And given the testimony of both Mr. Richardson and Mr. Elliot, given the overall context of the relationship, and given the email sent immediately following the phone call that did not mention the notice, the Court does not find this one piece of evidence credible.

ACCORDINGLY, IT IS THEREFORE ORDERED that notice was not timely given, and the lease expired.

# # #